



SANCTIONING REQUESTS OF PUBLIC ADMINISTRATION ENTITIES

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Abstract

The sanctioning of requests by public administration authorities in administrative proceedings is the least analysed, debated and completely unstructured institute of administrative law. The sanctioning of actions of public administration entities is closely related to the administrative supervision of the activities of economic operators, which helps to ensure the harmonisation of the individual economic operators and economic sectors, as well as of public health, environmental protection, and other constitutional values. Administrative supervision and other control by public administration is defined in the academic literature as a public administration activity in which a public administration entity monitors the compliance of the behaviour of its subordinates with legal norms, and, in the event of non-compliance, responds with the measures for the correction or punishment of behaviour. Despite the importance of administrative supervision and the impact it has on economic operators, we do not find any mention of sanctioning requests from public administration authorities in either the Law on Administrative Proceedings or the Law on Public Administration. The article presents the variety of requests for sanction submitted by public administration entities to the administrative court, possible classifications of applications submitted to the court and peculiarities of individual types of requests. The article also presents an analysis of the statistical data on the last few years of the examination of applications for sanctioning of public administration authorities before the Vilnius Regional Administrative Court, which has exclusive competence for the examination of these applications, the diversity of this type of applications (administrative cases), the main procedural peculiarities and problems of the examination of administrative cases of this type in the court, and provides insights and recommendations.

KEY WORDS: sanctioning, public administration, administrative supervision, supervision of economic operators, administrative procedure.

JEL: K1; K19.

Introduction

The sanctioning of actions of public administration entities is closely linked to the control and administrative supervision of the activities of economic operators, where the compliance of the behaviour of subordinate entities with the norms of the legislation is monitored, and in case of non-compliance, the response is to correct the behaviour or to sanction it. The concept of sanctioning derives etymologically from the Latin word "*sanctio*" or "*sanctionis*", meaning "*the strictest decree*". In the Lithuanian language, this term is synonymously used in legislation as permission, approval, giving of a sanction. It is also synonymous with the concepts of approval, endorsement and approbation used in the literature. In accordance with the Lithuanian dictionary, "sanction" can have several meanings: 1) approval from a higher authority, authorisation; 2) The part of a legal rule that specifies the state measures to be applied to the person who violates the rule; 3) a measure of public action taken against a person who is in breach of established rules and regulations; 4) a measure of sanctions against a state or group of states for violating a rule of international law or its international obligations.

By means of sanctioning actions, the supervision of economic activities in individual areas of economic activity is carried out, the improper behaviour of the market participants concerned is promptly responded to, information (data) is rapidly collected and/or obtained during the investigations carried out, and negative consequences or possible greater damage to the interests

of consumers, the State or other honest market participants are prevented by the authorised measures until the final conclusions of the investigations are drawn. In addition, the sanctioning action may also ensure the proper implementation/enforcement of decisions taken or sanctions imposed by the relevant public administration entities. Due to its impact and scale, further investigation of the judicial sanctioning action is necessary. The content of the issues raised by the decisions taken in the sanctioning requests, the nature of measures taken and the impact on the activities of economic operators call for greater attention to be paid to this area of administrative law. The author hopes that the article will contribute to the discussion on this topic, including the promotion of lawyers, possible legislative initiatives and greater interest of legal scholars in this heterogeneous institute of administrative law, as the rights and guarantees of freedom of economic activity, inviolability of private life, premises and property, freedom of information and opinion dissemination and other constitutional rights and/or guarantees are significantly discussed upon on the basis of the actions carried out on the basis of this institute. The concept of an economic operator used in this article is enshrined in the Law on Public Administration: economic operator means a natural or legal person or another organisation, a branch of a legal person or another organisation carrying out economic activities governing by legal acts in the territory of the Republic of Lithuania and supervised by entities authorised to carry out public administration in accordance with the procedure laid down by this and other laws (Article 2 (14)). The concept established in the Law on Competition is also used: economic operators

mean undertakings, their combinations (associations, unions, consortia, etc.), bodies or organisations or other legal or natural persons which carry out or may carry out economic activities in the Republic of Lithuania or whose actions or intentions, if implemented, could have an impact on economic activities in the Republic of Lithuania. Public administration entities of the Republic of Lithuania are economic operators if they carry out economic activities (Article 3 (22)).

The aim of the article is to analyse the main peculiarities of the legal regulation of sanctioning actions in administrative courts, the available statistical data on sanctioning actions in court, and to present the conclusions and recommendations that follow from this.

The subject of the investigation of the article is the acts of sanctioning carried out in administrative courts.

Methodology. The theoretical part of the article uses methods of analysis, logical analysis, synthesis and comparison of legal acts. The research uses qualitative and quantitative methods of statistical data analysis, synthesis, comparison and generalisation. A generalisation approach is used to formulate conclusions.

Theoretical background

The notion of sanctioning in the Lithuanian legal system is also found in the branches of criminal or administrative law, but the purpose of this article is to disclose the notion of sanctioning by administrative courts and the content of sanctioning in administrative law. In this respect, there are authors who have written scholarly work on the subject of sanctioning in administrative offences (formerly administrative offences) which are not directly relevant to the subject of this article. The main focus of the academic literature is on the investigation of covert surveillance activities under criminal procedure law or actions regulated by the Law on Criminal Intelligence. A number of criminal law specialists have published scholarly publications or conducted research in this area, but again, this is not the direct object of this article.

The sanctioning of actions of public administration entities is closely related to the administrative supervision of the activities of economic entities, which is understood as one of the necessary preconditions for the functioning of a sustainable and efficient economy, helping to ensure the harmonisation of individual economic operators and economic sectors and the general public health, environmental and other constitutional values. As the sanctioning of actions of public administration entities by administrative courts is closely related to the supervision of economic operators, the insights of researchers investigating administrative supervision and administrative coercive measures were significant in the preparation of this article. Administrative supervision and other control by public administration is defined in the academic literature as a public administration activity in which a public administration entity monitors the compliance of the behaviour of its subordinates with legal norms, and, in the event of non-compliance, responds

with the measures for the correction or punishment of behaviour. In the course of supervision of the activities of economic operators, public administration entities carry out certain supervisory actions which could be considered as actions that could be requested by the courts to be sanctioned or the content of a sanction, as they are largely related to the implementation of preventive actions aimed at preventing possible infringements of legislation or the application of impact measures.

In the Vilnius Regional Administrative Court, sanctioning cases account for approximately 3-4% of all cases heard by the court, but this institute is not given sufficient attention in administrative law, although the analogous institute is given a considerable amount of attention in criminal law (e.g., sanctioning of covert surveillance, seizure or search, authorisation of checking and collecting data on electronic communications, etc.). Sanctioning in administrative law is most often referred to in the context of administrative supervision or coercive measures imposed on economic operators, and in the description of the rights of the supervising officials. Sanctioning actions are used to supervise economic activity in specific areas of economic activity (e.g. consumer protection against low-quality or unsafe products, misleading advertising, prevention of illegal gambling, market surveillance of investment or insurance services, protection of personal data, compliance with competition rules, control of alcohol or tobacco, etc.) is carried out by means of authorisation actions, and prompt response to inappropriate behaviour of the market participants concerned, as well as the prompt collection and/or receipt of information (data) during the investigations. Sanctioning measures also prevent negative consequences or potentially greater damage to consumer interests, the State or other fair market participants before the final conclusions of the investigations. It should also be noted that it is also through sanctioning actions that the proper implementation (enforcement) of the decisions taken by the relevant public administration entities or the impact measures imposed can be ensured.

Content of sanctioning and possible classifications of sanctionable acts

Neither the Law on Public Administration nor the Law on Administrative Proceedings, which are the main legal acts defining the procedure before administrative courts and the criteria for assessing the decisions taken by public administration entities, contain any competence to be attributed to administrative courts in the context of sanctioning activities. However, Article 1(3), Article 17(2) and Article 20(4) of the Law on Administrative Proceedings establish the possibility to provide for additional competence of administrative courts in separate laws at the level of the law. It is precisely the fragmentation of sanctioning actions that makes them stand out, due to the existing legal regulation exclusively in individual legal acts, the drafting and coordination whereof falls within the competence of individual institutions supervising individual sectors of the economy. The legislative process and legal regulation on a sector-by-sector basis also leads to heterogeneity in sanctioning procedures, terms and terminology. We will find the institute of sanctioning assigned to the

competence of administrative courts over 20 laws, among which the following are the most frequently applied in the case-law: Law on Gambling (*Official Gazette* 2001, No 43-1495), Law on the Bank of Lithuania (*Official Gazette* 2001, No 28-890), Law on Copyright and Related Rights in Lithuania (*Official Gazette* 2003, No 28-1125), Law on the Provision of Information to the Public (*Official Gazette* 2006, No 82-3254), Law on Competition (TAR, 2017, No. 2017-01075), Law on the Protection of Consumer Rights (*Official Gazette* 2007, No 12-488), Law on Alcohol Control (*Official Gazette*, 2004, No 47-1548), Law on the Legal Protection of Personal Data (TAR, 2018, No. 11733), etc.

The administrative supervision to which sanctioning actions by courts requested by public administration entities are related shall be carried out, inter alia, by imposing certain sanctions on economic operators or individual economic sectors. In the theory of administrative legal coercion, various forms are found. The broadest classification is by the purpose of the measures: administrative preventive, administrative supervision and administrative liability measures (Deviatnikovaitė, 2021). However, sanctioning actions taken by the courts are not to be equated with measures taken by public administration entities in the course of administrative supervision, as they are actions taken by different entities and different legal categories in their essence. The following article attempts to shed light on the variety, content and possible classifications of sanctioning actions.

Despite the variety of sanctioning actions and legislation, the content of sanctioning is not defined in any single piece of legislation. While in the case of procedural coercive measures, by analogy with similar procedural coercive measures in criminal or administrative offences law, it could be argued that the content of the sanctioning is clear in this case, there is no such clarity in the case of the sanctioning/approval of the decisions taken by public administration entities. The same applies to the actions for the authorisation of requests to secure the decision of a future public administration entity or its execution. The scarce case law of the higher administrative courts on the application of this institute also creates uncertainty. For example, the Supreme Administrative Court of Lithuania has stated that “the fact that a decision has been sanctioned does not mean that the legality and reasonableness of the decision has been substantially established” (Case No A-638-492/2017 of the Supreme Administrative Court of Lithuania). In such a case, the question logically arises as to what should then be assessed and verified by the administrative court during the performance of the sanctioning actions, if no verification of the legality and validity of the decision taken by the public administration entity (or of the action requested) is carried out during the sanctioning. A closer inspection of the fable of the aforementioned administrative case shows that such a court conclusion was made due to the factual situation of the particular case and due to the peculiarities of the regulation of legal sanctioning actions and the case-law, since the parties to the proceedings were not able to appeal against the sanctioning action, despite the significant consequences of the sanctioning action for the

activities of the particular economic operator. Similarly, the reasons for the preliminary assessment of the request/decision at the time of sanctioning were also due to the need for the court to respond to the arguments of the parties to the proceedings in the light of the existence of two final judgments on the same decision taken by the same public administration entity: one administrative case involves an unchallenged court order sanctioning a decision and another administrative case involves a court decision on a decision of the same public administration entity. Thus, at present, it is generally considered in the case-law that during the sanctioning of decisions, the requested sanctioning action (the decision adopted) is provisionally assessed, but a detailed judicial assessment of its legality and validity is carried out when economic operators challenge decisions taken by public administration entities in a separate administrative case by means of a judicial appeal. Usually, the decision sought to be sanctioned (in the case of sanctioning of a decision) will specify the normal procedure for appealing against decisions of public administration entities.

In terms of their purpose (what the public administration entity is seeking to achieve) and nature (the procedural result sought and the impact on the economic operator), sanctioning actions can be classified in relative terms as:

1) Sanctioning of procedural coercive measures (e.g. request to sanctioning access to the premises of an economic operator or natural persons associated with it, to allow seizure of documents, to allow the collection of information transmitted by electronic means, etc.)

2) Sanctioning of decisions (e.g. a request for sanctioning of a decision to issue binding instructions to credit or financial institutions on the prohibition or suspension of business operations, a request for sanctioning of a decision on the requirement to block websites or access to a website containing infringing objects of copyright or related rights; request for sanctioning of a decision ordering a ban on access to a website offering illegal gambling, etc.)

3) Sanctioning of supervisory actions, which could be divided into:

a) Sanctioning preventive measures (e.g. temporary seizure of assets of individuals, order to stop illegal activities pending completion of the investigation and final decision)

b) Sanctioning of measures to enforce a judgment (e.g. temporary suspension of export or import operations, suspension of banking operations, suspension of authorisations to engage in certain activities may occur if economic operators fail to comply with the sanctions imposed).

In accordance with the specificities of the procedure, the sanctioning actions requested by the administrative courts could be divided into the following types:

1) Ex ante sanctioning. Under this procedure, in order to carry out certain actions, the public administration entity must first apply to the court for authorisation. Under this procedure, the court is asked to authorise certain procedural and/or coercive actions or to authorise the enforcement of a future decision of a public administration entity.

2) Ex post or sanctioning of decisions. In accordance with this procedure, a public administration entity which has adopted an administrative decision within its competence and procedure must, after the adoption of the decision, apply to an administrative court for its sanction. This procedure involves applications to the court for sanctioning of decisions taken by a public administration entity, and some laws provide for the possibility of obtaining subsequent sanctioning following coercive procedural steps taken, if necessary, without the prior authorisation of a court.

Advance sanctioning

Prior checking or sanctioning of the actions of a public administration entity is found in Law on Gambling, Law on the Bank of Lithuania, Law on Prevention of Money Laundering and Terrorist Financing (TAR, 2017, No. 2017-12068), Law on Competition, Law on Alcohol Control, Law on the Provision of Information to the Public, Law on Consumer Protection, Law on Legal Protection of Personal Data, Law on Animal Welfare and Protection (*Official Gazette*, 2012, No 122-6126), Law on Electronic Communications (*Official Gazette*, 2004, No 69-2382), Law on the Control of Tobacco, Tobacco Products and Related Products (*Official Gazette*, 2003, No 117-5317), Law on Energy (*Official Gazette*, 2011, No 160-7576), Electronic Identification and Trust Services for Electronic Transactions (TAR, 2018, No. 2018-07474), Law on Plant Protection (TAR, 2017, No. 2017-09793). In essence, this type of sanctioning action consists in the fact that the public administration authority, before carrying out certain supervisory or other actions in relation to economic operators, first applies to the court for sanctioning (approval, authorisation) of the supervisory action to be taken. It should also be noted that these sanctioning actions are not homogeneous: some are to be regarded as acts of administrative supervision, while others are procedural actions.

For example, with the intensification of acts of war propaganda, an amendment to the Law on the Provision of Information to the Public was adopted this year, which gives the right to the Inspector of Journalistic Ethics to issue binding instructions to providers of electronic information hosting services or providers of public electronic communications networks and/or public electronic communications services to remove or eliminate the possibility of accessing the information referred to in Article 19(1)(1) or (3) of the Law on the Provision of Information to the Public (TAR, 28 April 2022, No. 2022-08772). At the request of the Inspector, the Vilnius Regional Administrative Court may suspend the activities of the producer and/or disseminator of public information for a period not exceeding three months if the producer and/or disseminator of public information manifestly, seriously and gravely infringes the requirements of Article 19 (1) of this Law after all the conditions provided for in Article 52 of the Law have been established.

The pre-sanctioning procedure also deals with the sanctioning of preventive or supervisory actions related to the enforcement of administrative decisions. In these cases, the public administration entity does not collect

data for the investigation, nor does it exercise the procedural rights of officials in relation to inspections, but, in one case, during the course of the investigation, it determines the necessity to apply preventive measures until the final conclusions/results of the investigation are known, and in the other case, once the final conclusions and results of the investigation have been reached (the investigation decision and the decision to apply the impact measures have been adopted), it seeks to ensure that the decision is actually implemented and enforced. Thus, in this case, there are two types of sanctioning situations. In both cases, when sanctioning the requested action, the court will carry out the assessment of the request similarly to the application of security measures when examining the requests in accordance with the procedure of Article 70 of the Law on Administrative Proceedings. Only in the absence of a final decision on the investigation in one case and in the presence of a final decision in the other. It should be noted that, in the latter case, the sanctioning of measures to comply with the decision is not linked to the entry into force of the public administration's decision on the final conclusions of the investigation without appeal.

This type of sanctioning action is provided for in the Law on the Bank of Lithuania and the related laws already mentioned above (Law on Collective Investment Undertakings for Informed Investors Article 63, Law on Managers of Alternative Collective Investment Undertakings Article 58, Article 61 of the Law on Occupational Pension Accumulation, Law on Collective Investment Undertakings Article 164, Law on Markets in Financial Instruments Article 102, Law on Insurance Article 207, Law on Supplementary Voluntary Pension Accumulation Article 5800 and Law on Energy, Law on Competition, Law on the Provision of Information to the Public. Exclusive Legal Regulation Provided for Article 73 of the Law on Electronic Communications (rights relating to inspections) and Article 18 of the Law on Electronic Identification and Trust Services for Electronic Transactions. In one case, coercive procedural steps may be subject to prior judicial sanctioning, while in the other case they may be subject to a subsequent review of the legality and reasonableness of the same steps (sanctioning). This conclusion can be drawn from the legal norm which provides that the officials of the Communications Regulatory Authority (hereinafter referred to as the CRA) may, with the permission of the court, enter and inspect the premises, territory and vehicles used by and/or residing with a person, review the data and/or documents necessary for the investigation, obtain copies and extracts thereof, and the information contained in the computers and media, however, in cases of urgency, these procedural actions may also be carried out by a decision of the Director of the CRA, which is submitted to the court for sanctioning. Thus, in urgent cases, the decision to apply the procedural private measures referred to above may also be taken by the Director of the CRA, in which case the decision must be followed by a subsequent verification (sanctioning) of the legality and reasonableness of the decision taken by the public administration entity. It should be noted that similar provisions were laid down in the Code of Criminal Procedure on searches and seizures, which

provided that in urgent cases a search or seizure could be carried out by a decision of a pre-trial investigation officer or prosecutor without the authorisation of the pre-trial judge, but that the search or seizure had to be submitted to the pre-trial judge for approval within three days of the search or seizure (Articles 145, 147 of the Code of Criminal Procedure in the wording in force until 1 September 2011, amended by Law No XI-1478 of 21 June 2011 (*Official Gazette*, 2011, No. 81-3965)).

Subsequent (decision) sanctioning

In these cases, the decision, usually on certain measures of impact on economic operators or administrative supervision actions, is taken by the public administration entity, after taking into account all the circumstances relevant to the decision. The decision must provide for an appeal procedure. For a decision to become effective or enforceable, the law requires that it be sanctioned by a court.

This type of sanctioning is provided for in the Law on the Provision of Information to the Public, the Law on the Protection of Copyright and Related Rights and the Road Transport Code.

For example, Article 31(17) of the Law on the Provision of Information to the Public (relating to the licensing of radio and/or TV broadcasting activities and retransmission content) provides that the Lithuanian Radio and Television Commission, when adopting a decision on the temporary suspension or revocation of a licence, shall set a specific time limit from which the licence shall be suspended or revoked. The Commission's decision to suspend or revoke a broadcasting licence or a retransmission licence shall be sanctioned by the Vilnius Regional Administrative Court, with the exception of the Commission's decisions to revoke a broadcasting licence or a licence for retransmitted content where the licence holder refuses the licence.

Article 33 of the Law on the Provision of Information to the Public (regulation of unlicensed broadcasting and retransmission of radio and TV programmes) provides that Upon receipt of information in accordance with the procedure established by the Law on Protection of Objects of Importance for National Security or in accordance with the procedure established in this Law that any of the circumstances (threats) referred to in paragraph 2 of this Article exist, the Lithuanian Radio and Television Commission shall adopt a decision to prohibit <...> a person from carrying out broadcasting and/or retransmission activities in the Republic of Lithuania, from providing to the consumers of the Republic of Lithuania the distribution of TV programmes and/or individual programmes on the Internet or on-demand audio-visual media services, until such time as the circumstances (threats) referred to in paragraph 1 of this Article have ceased to exist. The Commission's decision must be sanctioned by the Vilnius Regional Administrative Court.

Article 34-1 of the Law on the Provision of Information to the Public provides that audiovisual media services provided from outside the Member States of the European Union, the countries of the European Economic Area and other European countries that have ratified the Council of Europe's Convention on Television without

Frontiers, broadcast or retransmitted, or distributed on the internet, of television programmes and/or individual programmes, where only an individual programme is transmitted, and/or catalogues in the Republic of Lithuania may be suspended by a decision of the Commission if the audiovisual media services, television programmes and/or individual programmes and/or catalogues of such countries violate the requirements laid down in Article 17 (protection of minors) or Article 19(1) (sensitive information) of this Law. A decision to suspend the reception of audiovisual media services, television programmes and/or individual programmes and/or catalogues on the territory of the Republic of Lithuania for more than 72 hours may only be taken with the sanction of the Vilnius Regional Administrative Court. Article 78(8) of the Law on Copyright and Related Rights also provides for the sanctioning of decisions. The Lithuanian Radio and Television Commission, after assessing the request submitted by the rights holder, his authorised person or collective management organisation <...> and in order to apply the mandatory instructions provided for in paragraph 3 of this Article to the Internet access service provider, shall, no later than within 14 calendar days from the date of receipt of all the documents, adopt a decision on the application of the mandatory instructions in accordance with Article 47, paragraphs 12, 13, and 14 of the Law on the Provision of Information to the Public. The Commission's decision to impose binding instructions on internet access providers must be sanctioned by the Vilnius Regional Administrative Court. Upon rectification of the infringement of copyrighted content and submission of the information to the Commission, access to the blocked internet domain name identifying the website shall be resumed within 5 business days from the date of receipt of the information on the rectification of the infringement of copyrighted content. This does not require court sanction.

Article 18-1(4) of the Road Transport Code (*Official Gazette*, 1996, No 119-2772) (tax inspection of carriage of passengers for remuneration) provides that the organiser of passenger carriage is obliged to provide the State Tax Inspectorate with information on the income from the activity of carriage of passengers for remuneration by passenger cars on request and other data related to the calculation and declaration of taxes in accordance with the procedure and within the due dates established by the State Tax Inspectorate. In the absence of this information, the State Tax Inspectorate is entitled to issue binding instructions to Internet access service providers to withdraw access to the website of the passenger transport organiser's services, which is used to accept orders for the carriage of passengers for remuneration by car on request, by blocking the internet domain name identifying the website until the infringement is remedied. The decision of the State Tax Inspectorate to impose the mandatory instructions on Internet access service providers must be sanctioned by the Vilnius Regional Administrative Court.

Research and discussion

The investigation was carried out on the basis of the statistical data of several years of sanctioning actions in administrative cases before the Vilnius Regional Administrative Court and the analysis of the main legal acts regulating these actions of the public administration. The article was prepared on the basis of the report read at the scientific practical conference and the court investigation of the cases of sanctioning.

Investigation of sanctioning actions in Vilnius Regional Administrative Court in 2019-2021

The sanctioning requests submitted to the Vilnius Regional Administrative Court by public administration entities in the period 2019-2021, each whereof is a basis for a separate administrative case, were examined. Among all administrative cases heard by the Vilnius Regional Administrative Court, sanctioning cases account for about 3-4% of all administrative cases heard by the court each year. For example, in 2021, among the 4809 administrative cases heard by the court, sanctioning action cases (category 36) accounted for 190 cases. In 2019, the court received 140 applications for sanctioning. In 2020, the court received 128 requests for sanctioning, and in 2021, 190 requests for sanctioning. The statistics for the last three years show a clear increase in the number of applications for sanctioning received by the Court and the number of sanctioning actions carried out by the Court.

Moreover, the requests for sanctioning received are not homogeneous. In particular, a single application for sanctioning may also request the sanctioning of several surveillance actions. For example, the Gambling Authority routinely requests sanctioning for two actions in its applications for sanctioning: both binding instructions to credit institutions on the suspension or termination of payments, business operations, settlements, and binding instructions to hosting service providers or network providers on the prompt removal of information or the restriction of access to information. It should also be noted that a single application for the sanctioning of an action may request the sanctioning of an action in respect of individual economic operators (for example, in respect of company A and persons associated with it) or in respect of individual objects (for example, websites to be blocked, copyright or audiovisual work to be protected). In such cases, it is questionable whether separate requests should not be made, as each subject or object is subject to a separate judicial assessment at the time of sanctioning. It also ensures that unrelated persons do not receive sensitive, redundant or unnecessary information about the investigation, and that related persons do not share information sensitive to the conduct of the investigation and do not compromise the results of the investigation. It would also protect the institutions, including the courts, from the additional and essentially administrative burden and activity of producing extracts of court proceedings not foreseen in the administrative procedure, which is not related to the administration of justice and the court's direct role.

As regards the qualitative indicators of sanctioning requests, it should be noted that, although fewer sanctioning requests were received in 2020, the

percentage of requests received and dealt with in relation to other administrative cases pending before the Court remained statistically similar (about 3-4% of all cases received and heard in court). Taking into account the fact that a single sanctioning request does not request the sanctioning of a single procedural or coercive measure in respect of more than one economic operator or object to be protected, and that it strengthens the administrative supervision of economic operators, there is no reason to believe that the number of sanctioning requests has been decreasing, or that it will continue to do so. This is confirmed by the number of sanctioning requests received in 2021.

The outcome of the sanctioning requests received between 2019 and 2021 shows that the vast majority of sanctioning requests were granted. In 2019, 7 sanctioning requests were rejected and 1 was partially granted. In 2020, 3 sanctioning requests were rejected, 5 were partially granted and 1 was deemed not to have been filed. In 2021, 1 request was rejected and 1 partially granted. Sanctioning requests were rejected on the grounds of abstractness or lack of specificity of the requests, as well as on the grounds that it was considered disproportionate to authorise certain coercive procedural steps in relation to the objectives pursued, and on the grounds that sanctioning requests were unfounded or not sufficiently substantiated by objective data. Sanctioning requests were partially granted when certain actions were requested on the premises of a number of legal persons, some of whom were not investigated and were not suspected. Requests were also partially granted, where sanctioning was sought for mandatory orders to block a number of websites related to illegal activities of economic operators in the Republic of Lithuania, without providing an exhaustive list of websites, but only stating that the request was for authorisation to block "other websites containing....." (without specifying existing or potential mirror websites of illegal economic activities).

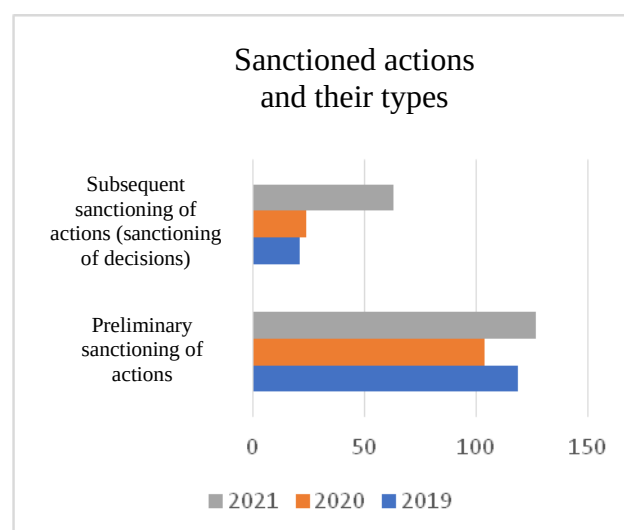


Fig. 1. Sanctioned actions and types of actions

In accordance with the applicants, the requests for sanctioning show that the Gambling Supervision Authority, the Bank of Lithuania, the Radio and Television Commission of Lithuania and the Lithuanian

Radio and Television Commission are the most active users of the statutory means of supervision of market participants (Table 1). The Competition Council, the State Data Protection Authority, the Drug, Tobacco and Alcohol Control Department, and other public administration entities have also applied to the court for sanctioning in 2019-2021. It should be noted that Table 2 shows the “activity” of public administration entities in terms of the number of requests submitted, but as mentioned above, a single request for sanctioning can in fact accommodate several requests for sanctioning actions, therefore, the data should be considered as relative.

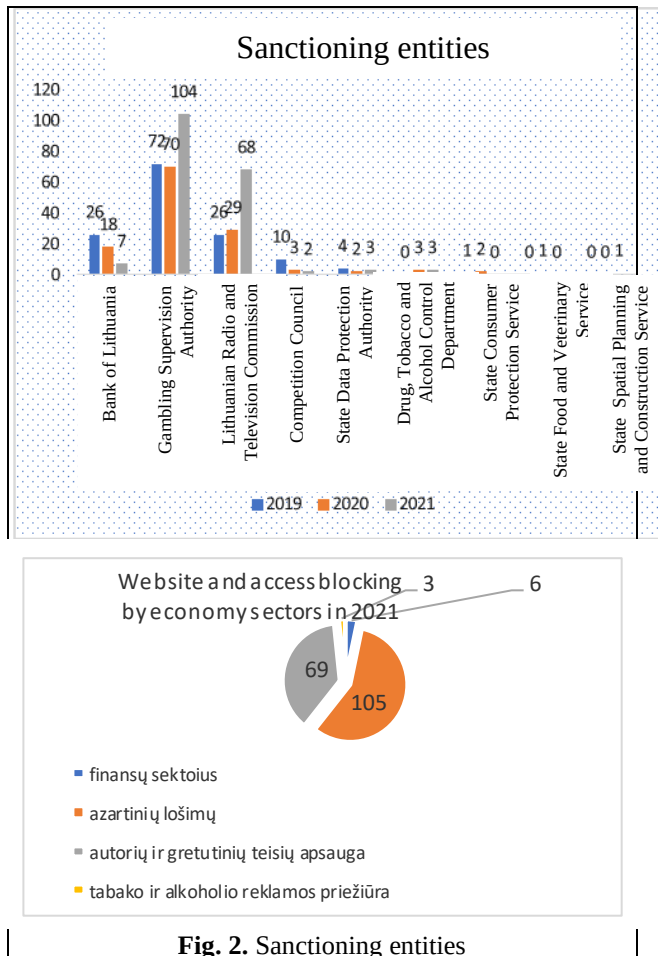


Fig. 2. Sanctioning entities

The nature of the requests between 2019 and 2021 shows that the number of sanctioning requests is quite varied, as this is also due to the different legal regulation of individual economic activities or sectors (branches of the economy), the particularities of the competences of individual institutions, etc. (Table 3). Nevertheless, in general terms, the majority of the applications before the Administrative Court were requests to sanction decisions or binding orders to block certain Internet pages or access to them or their content (Table 4). This is essentially related to the active role of supervisory authorities in supervising the activities of economic operators in the sector falling within their competence and in responding to the activities of economic operators that do not comply with the requirements of the legislation. In this way,

Lithuanian consumers are protected from illegal gambling websites and illegal investment service providers website content. It should be noted that the separate line “sanctioning of decisions” also includes, in principle, the blocking of websites or access to them, as far as the protection of copyright and related rights is concerned. The second most frequently requested coercive measure is the issuing of instructions to credit institutions to terminate or suspend financial or economic transactions. This involves tackling essentially illegal gambling activities that are normally licensed (gambling, lotteries). Only depriving of financial benefits or, more precisely, separating them from illicit financial earnings makes it possible to combat illegal economic activities more effectively and to encourage economic operators to license and more motivates existing licensed market participants to act in good faith and to comply with the established licensing conditions.

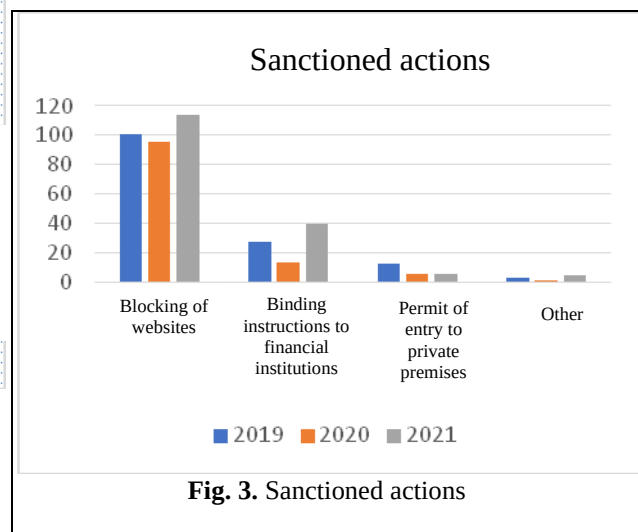


Fig. 3. Sanctioned actions

Requests for sanctioning also account for a significant proportion of the requests received. In 2019-2021, requests were also received for access to the premises of economic operators, permission to carry out certain procedural data collection actions, and permission to receive (collect) electronic communications data for investigative purposes.

Fig. 4. Relative percentage mapping

The survey shows that the vast majority of requests for sanctioning are pre-screening requests, where the court is essentially responsible for ensuring the proportionality, lawfulness and reasonableness of the application of certain procedural coercive measures.

Conclusions

Sanctioning in administrative law is most often referred to in the context of administrative supervision or coercive measures imposed on economic operators, and in the description of the rights of the supervising officials. Sanctioning actions are used to monitor economic activity in particular sectors of the economy, to react swiftly to misbehaviour by market participants, and to collect and/or obtain information (data) swiftly in the course of

investigations. Sanctioning measures also prevent negative consequences or potentially greater damage to consumer interests, the State or other fair market participants before the final conclusions of the investigations. It should also be noted that it is also through sanctioning actions that the proper implementation (enforcement) of the decisions taken by the relevant public administration entities or the impact measures imposed can be ensured.

The sanctioning of requests by public administration entities constitutes an important part of the administrative cases before the administrative courts, and the actions carried out on the basis of this institute have a significant impact on the freedom of economic activity, the rights and guarantees of privacy, the inviolability of premises and property, the freedom of dissemination of information and opinion, and other constitutional rights and/or guarantees.

Sanctioning actions are fragmented due to the existing legal framework, which is exclusively regulated by individual legal acts, the drafting and coordination whereof are the responsibility of separate authorities overseeing individual economic sectors. This also leads to a lack of uniformity in the sanctioning procedure, terms and terminology. The institution of sanctioning, which falls within the competence of administrative courts, is found in over 20 laws. Despite the variety of sanctioning actions and legislation, the content of sanctioning is not defined in any single piece of legislation.

In terms of their purpose (what the public administration entity is seeking to achieve) and nature (the procedural result to be achieved and the impact on the economic operator), sanctioning actions could be relatively divided into the sanctioning of procedural coercive measures, the sanctioning of decisions, and the sanctioning of supervisory actions. In accordance with the specificities of the procedure, the sanctioning actions requested by the administrative courts could be divided into *ex ante* sanctioning and *ex post*, or decisional sanctioning.

After summarising the results of the aforementioned investigation and the existing legal regulation of sanctioning cases in administrative courts, it should be considered whether at least the basic rules of the court's sanctioning procedure should not be established in the Law on Administrative Proceedings, thus ensuring clearer court proceedings and procedural status and guarantees of economic operators and persons subject to sanctioning actions.

References

- Ancelis, P. ir autorių kolektyvas. (2011). *Tyrimo veiksmai baudžiamajame procese*. Vilnius, Mykolo Romerio universitetas.
- Andruškevičius A. Administracinės teisės principai ir normų ribos. Monografija. Vilnius: VĮ Teisinės informacijos centras, 2004.
- Andruškevičius A. Administracinės teisės reguliavimo dalyko sudėtis. Teisė. 2002, 43
- Andruškevičius, A. (2010). Administracinio baudimo santykiai: teisingumo ir protingumo principų poveikis. Teisė;
- Ažubalytė, R., Jurka, R. ir kt. (2016). *Baudžiamojo proceso teisė. Bendroji dalis*. Vilnius, Registrų centro leidykla.
- Bakaveckas A. Viešasis administravimas: samprata, teisinis aspektas ir problemos. Jurisprudencija. 2001, 21(13)
- Beliūnienė, L. et al. (2014). Galimybės siaurinti teismo funkcijas administracinių teisės pažeidimų procese. Mokslo studija [interaktyvus], Lietuvos Teisės institutas. Prieiga per internetą: <https://teise.org/wp-content/uploads/2016/07/ATPP.pdf> [žiūrėta 2022 m. rugsėjo 22 d.];
- Bučiušas, G. (2014). Slaptas sekimas – tinkamos pusiausvyros paieška tarp visuomenės teisės būti saugia ir asmens teisės į privatumą, Kaunas, daktaro disertacija.
- Deviatnikovaitė, I. (2021). *Administracinė teisė. Bendroji dalis*. Vilnius, Mykolo Romerio universitetas.
- De Moor-Van Vugt, A. (2012). Administrative sanctions in EU Law. In Review of European Administrative Law, 5-41;
- Gedmintaitė, A. (2021). The Legal Framework for Administrative Liability in Lithuania: Lifting Legal Barriers to the Efficient Regulation of Administrative Offences. Iš: Švedas, G., Murauskas, D. (Eds.) Legal Developments During 30 Years of Lithuanian Independence Overview of Legal Accomplishments and Challenges in Lithuania. Springer, 2021
- Goda, G. (2005). *Baudžiamojo proceso teisė*. Vadovėlis, Vilnius, Teisinės informacijos centras.
- Markevičiūtė, M. Administracinės atsakomybės samprata ir teisinio reguliavimo modelis Lietuvoje daktaro disertacija, Socialiniai mokslai, Teisė (S 001) Vilnius, 2022
- Merkevičius, R. (2020). Lietuvos baudžiamojo proceso diagnozė: COVID-19 pasitikome turėdami prastą savijautą, minorines emocijas ir nuslopintą imunitetą, o kokie išliksime po jo? <https://www.teise.pro/index.php/2020/11/25/r-merkevicius-lietuvos-baudziamojo-proceso-diagnoze-covid-19-pasitikome-turedami-prasta-savijauta-minorines-emocijas-ir-nuslopinta-imuniteta-o-kokie-isliksime-po-jo/> ;
- Merckx, D. (2006). Sanctioning economic crime. An integrated policy. Brussels: VUB Brussels University Press;
- Misiūnas J. Baudžiamieji ir administraciniai įstatymai: Siamo dvynių problemos. Teisės problemos. 1996, 3
- Kunnecke M. Tradition and Change in Administrative Law. An Anglo – German Comparison. Berlin, New York: Springer, 2007.
- Rubira J. J. L. Some trends in administrative law in the 21st century. Texas International Law Journal. 2001, 36
- Petkevičius, P. (2003). Administracinių teisės pažeidimų bylų teiseną. Vilnius: Teisinės informacijos centras;
- Petkevičius, P. (1996). Administracinė atsakomybė. Vilnius: Justitia;

- Piesliakas, V. (2006). Lietuvos baudžiamoji teisė. Pirmoji knyga. Baudžiamasis įstatymas ir baudžiamosios atsakomybės pagrindai. Vilnius: Justitia;
- Šedbaras, S. (2005). Administracinė atsakomybė. Vilnius: Justitia;
- Šilvaitė E., Ūkio subjektų veiklos priežiūros pokytis, teisė, 2021
- Šlajienė, V., Šliažienė, R. (2021). Peculiarities of application of interim measures in arbitration. *Vadyba. Journal of management*. No. 2 (37).
- Urbanas, D. (2005). Administracinių sankcijų konstitucinis legitimumas. *Jurisprudencija*, 70(62);
- Urbanas, D. (2007). Kvaziteisminių institucijų jurisdikcinė veikla taikant administracines sankcijas. Daktaro disertacija, socialiniai mokslai, teisė (01S), Mykolo Riomerio universitetas. Vilnius;
- Urmonas, A. (2006). Administracinė teisė socialinių pokyčių erdvėje. *Jurisprudencija*, 5(83);
- Urmonas A., Pranevičienė B. Administracinės diskrecijos esmė ir diskrecijos kontrolės galimybės. *Jurisprudencija*. 2002, 32
- Paužaitė-Kulvinskienė, J. (2021). Administrative Liability in Lithuania: The Model of Corporate Administrative Liability Iš: Švedas, G., Murauskas, D. (Eds.) *Legal Developments During 30 Years of Lithuanian Independence Overview of Legal Accomplishments and Challenges in Lithuania*. Springer, 2021,
- Valančius V. Europos Sąjungos teisės poveikis Lietuvos administracinei justicijai: tendencijų kontūrai. Pirma dalis. *Jurisprudencija*. 2007, 7(97).
- Lietuvos Respublikos Konstitucija (1992). <https://www3.lrs.lt/home/Konstitucija/Konstitucija.htm>.
- Lietuvos Respublikos administracinių bylų teisenos įstatymas // Valstybės žinios, 1999, No. 13-308; 2000, No. 85-2566, TAR, 2016-06-15, No. 2016-16849
- Lietuvos Respublikos administracinių nusižengimų kodeksas (2015). <https://www.e-tar.lt/portal/lt/legalAct/4ebe66c0262311e5bf92d6af3f6a2e8b>.
- Lietuvos Respublikos kelių transporto kodeksas // Valstybės žinios, 1996, No. 119-2772.
- Lietuvos Respublikos kriminalinės žvalgybos įstatymas // Valstybės žinios, 2012, No. 122-6093.
- Lietuvos Respublikos azartinių lošimų įstatymas // Valstybės žinios, 2001, No. 43-1495.
- Lietuvos banko įstatymas // Valstybės žinios, 2001, No. 28-890.
- Lietuvos Respublikos autorių ir gretutinių teisių įstatymas // Valstybės žinios, 2003, No. 28-1125.
- Lietuvos Respublikos visuomenės informavimo įstatymas // Valstybės žinios, 2006, No. 82-3254.
- Lietuvos Respublikos konkurencijos įstatymas // TAR, 2017, No. 2017-01075.
- Lietuvos Respublikos vartotojų teisių apsaugos įstatymas // Valstybės žinios, 2007, No. 12-488.
- Lietuvos Respublikos alkoholio kontrolės įstatymas // Valstybės žinios, 2004, No. 47-1548.
- Lietuvos Respublikos asmens duomenų teisinės apsaugos įstatymas // TAR, 2018, No. 11733.
- Lietuvos Respublikos gyvūnų gerovės ir apsaugos įstatymas // Valstybės žinios, 2012, No. 122-6126.
- Lietuvos Respublikos energetikos įstatymas // Valstybės žinios, 2011, No. 160-7576.
- Lietuvos Respublikos viešojo administravimo įstatymas // Valstybės žinios 1999, No. 60-1945, 2006 No. 77-2975, TAR 2020-06-11 No. 2020-12819
- Lietuvos vyriausiojo administracinio teismo byla No. A638-492/2017.

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